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| APPLICATION NO.       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------|-------------|----------------------|---------------------|------------------|
| 09/964,131            | 09/26/2001  | Yoshihisa Adachi     | 70904-56521         | 9989             |
| 21874                 | 7590        | 10/19/2004           | EXAMINER            |                  |
| EDWARDS & ANGELL, LLP |             |                      | HINDI, NABIL Z      |                  |
| P.O. BOX 55874        |             |                      | ART UNIT            | PAPER NUMBER     |
| BOSTON, MA 02205      |             |                      | 2655                |                  |

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding

|                              |                 |               |
|------------------------------|-----------------|---------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)  |
|                              | 09/964,131      | ADACHI ET AL. |
| Examiner                     | Art Unit        |               |
| NABIL Z HINDI                | 2655            |               |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/15/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Toda et al (5974021).

The reference shows an optical disk recording and reproducing apparatus comprising: a recording condition determining means (initialization means) to determine the test recording operation on the disk fig 2 wherein the recording condition is determined based on the disk type, recording condition computing means for determining the test writing signal on the disk as shown in fig 2 the test recording is determined based on the “NON-DOW” and “DOW” disk types, track switching means (tracking operation to move from one track to another) see fig 1 element 23, and computation use information managing means using the optimal recording power in recording data on the disk see fig 2 “optimal power” usage.

With respect to the limitations of claims 2 and 14. The use of land/groove tracks is inherently present in every optical disk.

With respect to the limitations of claims 3, 7, 15 and 19. The use of preparing means test writing on the disk as shown in fig 2.

With respect to the limitations of claims 4, 5, 8, 9, 16, 17, 20 and 21. The use of “test power” on the disk within the lead-in area of the optical disk “PMA area” is a standard

procedure within the optical disk as shown by fig 8 of obtaining the "initial" values for test recording.

With respect to the limitations of claims 6, 10, 11, 18, 22 and 23. The use of a multi-layer optical disk is well established in the art.

With respect to the limitations of claims 25 and 26. the reference is drawn to an optical disk (DVD, ROM, CD...etc) which is well known to be used in computer.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. RE38602.

Any inquiry concerning this communication should be directed to NABIL Z HINDI at telephone number (703) 308-1555.



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GROUP 2500  
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